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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 AMAZON.COM, INC. )

10 v. )

C04-1777P

11 UNDERWRITERS, LLOYD'S OF )  
12 LONDON, et al, )  
13 Defendants. )

ORDER DENYING XL INSURANCE LTD'S  
MOTION TO DISMISS PURSUANT TO FRCP  
12(b)(2) AND 12(b)(5)

14 This matter comes to the attention of the Court on Defendant XL Insurance Ltd's (XL's)  
15 Motion to Dismiss for lack of personal jurisdiction under Fed R. Civ. P. 12(b)(2) and for lack of  
16 proper service under Fed. R. Civ. P. 12(b)(5). Having considered all relevant papers and pleadings on  
17 this Motion, the Court concludes that under Washington's long-arm statute, this Court may exercise  
18 personal jurisdiction over XL, and that XL was served properly by Amazon.com for the purposes of  
19 this action. The Court hereby DENIES XL's Motion to Dismiss.

20 BACKGROUND

21 In March 2001, a consolidated class action, In re Amazon.com Inc. Securities Litigation ("the  
22 Shareholder Action"), was filed in this Court before Judge Lasnik. The basis of this litigation was The  
23 Shareholder plaintiffs' allegation that Amazon's officers and directors made fraudulent statements to  
24 inflate the value of various Amazon.com securities. In May 2001, a second class action known as the  
25 "Arbitrage action" (because of the involvement of plaintiff Argent Classic Convertible Arbitrage Fund,

1 L.P.) was also filed before Judge Lasnik. This second action was based on the Arbitrage plaintiffs'  
2 contention that Amazon's officers and directors sold Premium Adjustable Convertible Securities  
3 ("PEACS") to plaintiffs at an inflated price.

4 Previous to the commencement of the two class actions, Amazon had purchased insurance for  
5 its directors and officers (D&O Insurance) from National Union. The primary policy with National  
6 Union insured Amazon for up to \$10 million in damages, including defense costs. In addition,  
7 Amazon also purchased successive excess insurance policies from Underwriters at Lloyd's of London  
8 (\$20 million), Swiss Re (\$20 million), and XL Insurance, Ltd. (\$10 million). These policies were set  
9 up to follow the coverage afforded by the primary policy (Def's Mot. at 2-3). National Union was  
10 never a Defendant to this action. Underwriters at Lloyd's was dismissed as a party on December 15,  
11 2004. (Dkt. No. 29).

12 Amazon alleges that it is now in the process of trying to settle the class actions, particularly the  
13 Argent action, but that its efforts have been hampered by Swiss Re's and XL Insurance Ltd.'s lack of  
14 cooperation. Specifically, the excess insurers are claiming that their policies do not cover Section 11  
15 and 12 securities violations. Amazon.com filed this action asking that the Court grant it declaratory  
16 relief and find that the excess insurers have breached their contracts with Amazon, as well as violated  
17 the WCPA. Amazon also pleads equitable estoppel and asks for attorney's fees. Defendant XL brings  
18 the current 12(b) motions, asking that Amazon.com's claims for declaratory relief against it be  
19 dismissed for lack of personal jurisdiction and for failure to properly serve XL.

## 20 ANALYSIS

### 21 I. Lack of Personal Jurisdiction under Fed. R. Civ. P. 12(b)(2)

22 XL argues that it is a Bermudian corporation, which is headquartered in and organized under  
23 the laws of Bermuda. It states that it negotiated and executed its contract for coverage of Amazon in  
24 Bermuda. XL states that it has no registered agent in WA, no offices in WA, and no minimum  
25 contacts with the state that would justify either specific or general jurisdiction over it. Amazon argues

1 that XL is subject to Washington's long-arm statute and that this court, therefore, has subject-matter  
2 jurisdiction over it.

3 A. The Long-Arm Statute

4 In relevant part, Washington's long arm statute states:

5 (1) [a]ny person, whether or not a citizen or resident of this state, who in person or  
6 through an agent does any of the acts in this section enumerated, thereby submits said  
7 person, and, if an individual, his personal representative, to the jurisdiction of the courts  
8 of this state as to any cause of action arising from the doing of any said acts:. . .  
(d) Contracting to insure any person, property or risk located within this state at the  
time of contracting. RCW 4.28.185

9 At the time of the contract between XL and Amazon, Amazon was headquartered in Washington and  
10 the majority of its board of directors and officers resided in the state. (Pl's Resp. at 4). Nonetheless,  
11 XL argues that subjecting it to Washington state's jurisdiction, when it specifically contracted to avoid  
12 litigation, violates XL's due process rights.

13 B. Due Process Concerns

14 Defendant argues that under the 14<sup>th</sup> Amendment, Washington's long-arm statute may only be  
15 applied if XL can be found 1) to have purposely availed himself of the privileges and protections of  
16 Washington by doing some business in the state; 2) that the suit in question arises from this activity;  
17 and 3) the exercise of jurisdiction meets traditional notions of fair play and is reasonable. American  
18 President Lines, Ltd. v. Metropolitan Stevedore Services, 567 F. Supp. 169, 170 (W.D. Wash. 1983).  
19 Defendant points out that it did not "purposely avail" itself of Washington law, but instead specifically  
20 contracted to have its disputes settled under New York law and arbitrated in London. At no time,  
21 notes XL, did it come to Washington, have a registered agent in Washington, or run a business in  
22 Washington. Because it met none of these criteria, XL also argues that it would violate traditional  
23 notions of fair play to subject it to Washington state jurisdiction.

24 In making these arguments, however, XL ignores the fact that insurance regulation is subject  
25 to special public policy considerations in Washington state. None of the cases Defendant relies upon

1 to support its claim that its due process would be violated involve insurers or insureds. Defendant  
2 characterizes one case, American President Lines, Ltd. v. Metropolitan Stevedore Services, as a case  
3 involving a “property policy covering contingencies that could arise anywhere in the world related to  
4 insured vessels . . .” (Def’s Mot. at 7). This case does not involve an insurance dispute. Instead,  
5 American President Lines involved a dispute over poorly loaded cargo between a stevedore service  
6 and a Washington-based vessel owner. Id. While it is true that the Court in that case did not find that  
7 Washington courts could exercise jurisdiction over the defendants, the analysis is not directly on point  
8 because it did not involve an insurance policy.

9 A better analysis is found in Haisten v. Grass Valley Medical Reimbursement Fund, Ltd., a  
10 case in which the insurer, who was based in the Cayman Islands, took great pains to have no contacts  
11 with California, where it insured doctors against malpractice. The Haisten court found that “activity  
12 by the defendant need not physically take place in the forum state so as to constitute sufficient contact  
13 under the due process test.” 784 F. 2d 1392, 1397 (9<sup>th</sup> Cir. 1986). Rather, the court found that as  
14 long as defendant’s connection with the forum state was such that it could “. . . reasonably anticipate  
15 being haled into court there,” then this connection would satisfy the due process concerns connected  
16 to the exercise of jurisdiction. Id., (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S.  
17 286, 287 (1980)). In the case at hand, XL’s ongoing commitment to insure a company headquartered  
18 in Washington state provides this connection. Therefore, XL’s motion to dismiss under 12(b)(2) is  
19 DISMISSED.

20 II.. Lack of Proper Service under Fed. R. Civ. P. 12(b)(5)

21 A. The WA Statute applies, not the Hague Convention

22 The basis of XL’s claim on this motion is the fact that it is an alien insurer, whose principal  
23 place of business is overseas. Under these conditions, XL argues, it should have been served in a way  
24 conforming with the Hague Service Convention.

25 Under Washington law, service of process for unauthorized alien insurers may be effectuated

1 by serving duplicate copies of the summons on the state Insurance Commissioner via a person  
2 competent to serve a summons or by registered mail, along with payment of a \$10 fee to the  
3 Commissioner. RCW 48.05.215. Plaintiff in this case asserts that it met these conditions, and that XL  
4 received notice of the suit on August 27, 2004 (Pl's Resp. at 3, 11). The Supreme Court, in  
5 considering the Hague Convention has held that, "[w]here service on a domestic agent is valid and  
6 complete under both state law and the Due Process Clause, our inquiry ends and the Convention has  
7 no further implications." Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 707 (1988).  
8 XL does not contend that Amazon's service was deficient by Washington state standards, leaving this  
9 Court to decide if the service fulfilled due process standards.

10 B. Due Process Concerns

11 Although this Court has already decided that it may exercise personal jurisdiction over XL  
12 under Washington's Long-arm statute, a court may not exercise its jurisdiction over a defendant who  
13 has not been properly served according to the minimum requirements of due process. Powell v.  
14 Sphere Drake Ins. P.L.C., 97 Wn. App. 890, 899, 988 P. 2d 12 (1999). Here, Plaintiff Amazon  
15 complied with the Washington statute regarding service on unauthorized alien insurers. Under RCW  
16 48.28.080(10), service on foreign corporations is reviewed for substantial compliance, and focuses on  
17 whether or not the method of service was "reasonably calculated to provide notice to the defendant."  
18 Id. at 900. XL does not deny that it received the summons by the method Amazon chose to serve it.  
19 The Court finds that Amazon complied with its statutory and Constitutional duties regarding service of  
20 process and DENIES XL's motion to dismiss under FRCP 12(b)(5).

21 The clerk is directed to send copies of this order to Plaintiff and all counsel of record.

22 DATED this 17<sup>th</sup> day of May, 2005.

23  
24 /s/ Marsha J. Pechman  
25 Marsha J. Pechman  
26 United States District Judge